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THE HARVARD LAW SCHOOL holds high its head in patriotic pride. Not since the fifties have there been so few students in the class-room. From over eight hundred and fifty two years ago the attendance has dropped to about seventy. Those who returned did so only because there was no war service for which they were fit.

Under these conditions the REVIEW faced this year the most serious situation in its entire history. Of last year's editors only one, the treasurer-elect, came back. The choice of new men was necessarily limited. But although the staff will be small and the cases fewer, the same high standard of former years will be maintained. Quantity will be sacrificed to quality.

It should not go unnoted that but for the war Arthur D. Platt of Portland, Oregon, would be president of this year's board of editors. At the spring meeting he was elected to the office, but was reclassified during the summer by his draft board and called into service. Clifton Murphy of Georgetown, South Carolina and Harold Reindel of Cleveland, Ohio, had been appointed by him as note and case editor respectively. The former is already in service and the latter is waiting to be called.

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THE LAW SCHOOL.—The attendance in the school, as was to be expected, has been still further reduced by the war. The total registration at present (October 18) is 69, distributed as follows: First year, 18; Second year, 16; Third year, 20; Graduates, 3; Unclassified, 11; Special, 1.

The vacancies in the teaching staff caused by the death of Professor Westengard and the return of Professor Bates to Michigan have been temporarily filled by the appointment of Manley O. Hudson as lecturer for the current year and of George J. Thompson as Ezra Ripley Thayer Teaching Fellow.

Mr. Hudson received the degrees of A.B. and A.M. from William Jewell College in 1906 and 1907 respectively. He received the degree of LL.B. *cum laude* from this school in 1910 and that of S.J.D. in 1917. Immediately upon graduation in 1910 he was appointed a professor of law at the University of Missouri, where he remained until recently called to Washington as special Legal Adviser to the Department of State. He will teach here Property III and International Law.

Mr. George J. Thompson received the degree of S.B. from the University of Pennsylvania in 1909 and the degrees of LL.B. and S.J.D. from this school in 1912 and 1918 respectively. For two and one-half years he taught law at Pei Yang University in Tientsin, China. He will give the course in Public Utilities.

The following additional changes in courses have been made necessary: Constitutional Law and the entire course in Torts will be given by Dean Pound. Partnership will be given by Asst. Professor Chafee.

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ENGLISH AND AMERICAN ADMINISTRATION OF ROMAN LAW.—It is no doubt gratifying to the student of the common law to see it gradually pushing out the modern Roman law wherever through extension of British or American political power the two systems are brought into

competition. Yet the manner of the process is not always edifying to the thoughtful lawyer. Too often it suggests Mr. Podsnap's backward sweep of the hand and solving phrase "not English." On the one hand we find the Supreme Court of the United States turning to Glanvill in order to understand the Roman law as to universal succession for the purposes of an appeal from Porto Rico.<sup>1</sup> At the other extreme, the Judicial Committee of the Privy Council now express grave doubts about a doctrine in the Roman-Dutch books when it is merely derived from or fortified by the general Romanist juristic writings of the period of the Reception. In *Demerara Turf Club v. Wight*,<sup>2</sup> on a question of offer and acceptance in a sale by auction, a decree of specific performance made by the Supreme Court of British Guiana rested on an alleged rule of Roman-Dutch law requiring express reservation of the right to withdraw. In the course of a decision reversing the decree and denying that there is such a rule of Roman-Dutch law, Sir Walter Phillimore says: "The writers on Roman-Dutch law also avail themselves of the writings of the commentators of other European nations, such as Bartolus, who was an Italian, and Choppinus, who was a Frenchman from Anjou. How far they can be used as authorities on Roman-Dutch law may be doubted."<sup>3</sup> The starting point of the system known as Roman-Dutch law is not later than the setting up of the Great Council at Mechlin in 1473.<sup>4</sup> At this time Roman law was a universal law and Bartolus was its most authoritative exponent.<sup>5</sup> Perhaps if a Romanist were some day to administer Anglo-American law in some Pacific island, he might be found saying: "The writers on American common law also avail themselves of the writings of European nations, such as Coke who was an Englishman. How far he can be used as an authority on American law may be doubted." Then he might cite the American legislation after the Revolution forbidding citation of English authorities and the *dictum* of Judge Dudley that he had never read and never would read Coke or Blackstone.<sup>6</sup>

Both in American administration of Roman-Spanish law and British administration of Roman-Dutch law, the fundamental assumption is that English common law is the order of nature. The burden is on those who assert a rule or principle or mode of thinking at variance therewith to prove it clearly by texts of undoubted authority, and if they are able to do so, our tribunals seem to think of the situation on the analogy of an exceptional modification of the common law by an interloping statute. Hence when Roman-Dutch writers "endeavor to help themselves out by the analogy of the Roman law as to sales by *addictio in diem*,"<sup>7</sup> we are told that the analogy is misleading. So are many analogies upon which rest settled common-law doctrines. But when a court is ad-

<sup>1</sup> *Ubarri v. Laborde*, 214 U. S. 168, 172 (1909).

<sup>2</sup> [1918] A. C. 605.

<sup>3</sup> *Ibid.*, 611.

<sup>4</sup> LEE, ROMAN-DUTCH LAW, 2-4; WESSELS, HISTORY OF ROMAN-DUTCH LAW, 126.

<sup>5</sup> "It may safely be said that the jurisprudence of the later centuries of the Middle Ages — even down to the sixteenth century — is based, in its essentials, on the glossa and the writings of Bartolus." GRUEBER, INTRODUCTION TO SOHM, INSTITUTES OF ROMAN LAW, Ledlie's transl., xvi.

<sup>6</sup> Corning, "The Highest Courts of Law in New Hampshire," 2 GREEN BAG, 469, 470.

<sup>7</sup> [1918] A. C. 611.

ministering a foreign law one may ask whether the mode of reasoning, the judicial method and traditional analogies are not more significant than the detailed rules. At any rate the picture, so often painted, of peoples under British dominion enjoying their own traditional laws, scrupulously administered for them by the British courts, needs some retouching.

**IMPLIED WARRANTY OF FOOD.** — It is settled by numerous English and American decisions that one who sells food for immediate consumption impliedly warrants that it is wholesome.<sup>1</sup> Obvious as it is, the distinction between the absolute liability of a warrantor of food irrespective of negligence, and the liability of a tortfeasor for negligence is sometimes blurred. Often, perhaps generally, a seller of injurious food has been guilty of negligence, and in a particular case it may become immaterial whether the defendant's liability is absolute or based on negligence. Often, however, the distinction is vital. It is important not only in determining questions of liability between the original parties to a transaction but because a warranty gives a right only to the immediate purchaser,<sup>2</sup> while a negligent seller of dangerous food may be liable to any person ultimately injured.<sup>3</sup>

Several recent decisions call attention to the boundaries of the principle of absolute liability for the wholesome character of food. At the outset it should be said that it is well recognized that unless food is sold by a dealer for immediate consumption, there is no implied warranty except under circumstances where a warranty would be implied in the sale of goods of other kinds.<sup>4</sup> Where the buyer himself examines and selects the food which he purchases, the existence of a warranty has been denied,<sup>5</sup> on the ground that the buyer does not rely on the seller's skill and judgment but on his own. The reasoning seems inconclusive. Such a buyer may rely on the seller's judgment by assuming as he fairly may that all the articles offered to him are suitable for food, and when he chooses one article rather than another, he should be regarded, unless the defect is an obvious one, as seeking merely the best of a number of things all of which are at least not dangerous to eat.<sup>6</sup> The warranty does not extend to sales of food for cattle.<sup>7</sup> It has recently been held inapplicable to the sale of canned goods,<sup>8</sup> because, it is said the seller

<sup>1</sup> Recent decisions are: *Frost v. Aylesbury Dairy Co. Ltd.* [1905] 1 K. B. 608; *Askam v. Platt*, 85 Conn. 448, 83 Atl. 529 (1912); *Ward v. Great Atlantic & Pacific Co. (Mass.)* 120 N. E. 225 (1918); *Race v. Krum*, 222 N. Y. 410, 118 N. E. 853 (1918).

<sup>2</sup> *WILLISTON, SALES*, § 244.

<sup>3</sup> *Ketterer v. Armour*, 247 Fed. 921 (1912); *Parks v. C. C. Yost Pie Co.*, 93 Kans. 334, 144 Pac. 202 (1914).

<sup>4</sup> *WILLISTON, SALES*, § 242.

<sup>5</sup> *Farrell v. Manhattan Market Co.*, 198 Mass. 271, 84 N. E. 481 (1908); *Gearing v. Berkson*, 223 Mass. 257, 259, 111 N. E. 785 (1916).

<sup>6</sup> See *Wallis v. Russell*, [1902] 2 Ir. 585; *Sloan v. F. W. Woolworth Co.*, 193 Ill. App. 620 (1915).

<sup>7</sup> *Dulaney v. Jones*, 100 Miss. 835, 57 So. 225 (1911); *F. A. Piper Co. v. Oppenheimer*, 158 S. W. 777 (1913).

<sup>8</sup> *Bigelow v. Maine Central R. Co.*, 110 Me. 105, 85 Atl. 396 (1912) (commented on in 26 HARV. L. REV. 556); *Trafton v. Davis*, 110 Me. 318, 86 Atl. 179 (1913).